independently reached by the Iowa Supreme Court, which noted that although "freedom of choice in residence is of keen interest to any individual, it is not a fundamental interest entitled to the highest constitutional protection." 701 N.W.2d at 664.

CONCLUSION

In an effort to protect Iowa's children from a threat that cannot be quantified with any precision, the Iowa legislature has made a difficult, but certainly not unprecedented, decision. While reasonable people can disagree about the wisdom of the law, its constitutionality is not seriously in doubt. This Court should deny this Petition for Writ of Certiorari.

Respectfully submitted,

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Supreme Court of the United States

JOHN DOE I, JOHN DOE II, JOHN DOE III,
on their own behalf and on behalf of the class,

Petitioners,

v.

THOMAS J. MILLER,

Respondent.

On Petition For Writ Of Certiorari
To The Eighth Circuit Court Of Appeals

BRIEF AMICUS CURIAE OF ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INTEREST OF AMICUS

The Association for the Treatment of Sexual Abusers ("ATSA") is an international, multi-disciplinary professional association dedicated to the research, treatment, and prevention of sexual assault. ATSA's members include the world's leading researchers in the study of sexual violence. Membership is also made up of professionals who evaluate and treat sexual offenders, sexually violent predators, and victims. Members work closely with public and private organizations such as prisons, probation departments, law enforcement agencies, child protection services, State Attorney's Offices, Public Defender's Offices, victim advocacy groups, and state legislatures in an effort to protect citizens from sexual assault. ATSA advocates for evidence-based practices and policies that are most likely to protect the public from sexual violence, while allowing for the rehabilitation of sexual offenders.[1]

SUMMARY OF THE ARGUMENT

The Court should grant the petition for writ of certiorari because of the national significance of the Eighth Circuit's decision in *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005).

A crisis is looming in Iowa and nationally as a result of the Eighth Circuit's decision. Although the protection of

[1] No counsel for any party authored any part of this brief. The Ohio Justice & Policy Center paid the printing costs of this brief. No other persons or entities made any monetary contribution to the preparation or submission of this brief. Letters from the parties consenting to the filing of this brief have been submitted to the Clerk of the Court.

children from sexual abuse is indisputably a compelling government interest – one that ATSA works hard to promote – sex offender residency laws actually harm the innocent children they are intended to protect.

Research has shown that sex offenders with stable housing and social support are much less likely to commit new sex offenses compared to those offenders who lack stability. Residency restrictions deprive sex offenders of stable housing and social support, and thus significantly increase the risk of recidivism. Moreover, sex offenders who become homeless as a result of these restrictions will be more difficult to supervise and monitor in the community, thereby increasing the risk to children. Furthermore, sex offender residency statutes create a false sense of security that may leave children more vulnerable to sexual abuse.

There is no evidence that these laws actually protect children. To the contrary, those states that have studied the issue carefully have found no relationship between sex offense recidivism and sex offenders' proximity to schools or other places where children congregate.

In reality, sex offender residency laws are driven by fear, not facts. Despite widespread belief that sex offender recidivism rates are high, recent studies have shown that such recidivism is the exception, rather than the rule, particularly if the offender has received treatment.

The current situation in Iowa and surrounding states illustrates precisely why this case has national significance. Housing in large Iowa cities, with numerous schools and daycares, is already off limits to sex offenders subject to the statute. In the wake of the Eighth Circuit's ruling, "unprotected" smaller towns (i.e., those that do not have a

school or daycare) have rushed to pass ordinances prohibiting sex offenders from living within 2000 feet of parks or other places where children might be expected to congregate. Worried that Iowa sex offenders will try to move there, numerous towns in nearby Nebraska and South Dakota have passed, or are considering enacting, ordinances prohibiting sex offenders from relocating there. There is no end in sight to this domino effect. Ultimately, our nation's children will suffer from laws that destabilize sex offenders and increase the risk of recidivism.

ARGUMENT

I. THE SUPREME COURT SHOULD GRANT CERTIORARI BECAUSE OF THE NATIONAL SIGNIFICANCE OF THE EIGHTH CIRCUIT'S RULING AND BECAUSE SEX OFFENDER RESIDENCY STATUTES ULTIMATELY HARM, RATHER THAN PROTECT, CHILDREN.

In *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005), the Eighth Circuit upheld Iowa Code Section 692A.2A, which prohibits sex offenders[2] from living within 2000 feet of schools and daycares. Though well intentioned, sex offender residency statutes like Iowa's make children less, not more, safe.

[2] The statute applies to sex offenders whose offenses involved minors. For convenience's sake, this brief will refer to such individuals as "sex offenders."

A. Sex Offender Residency Statutes Increase the Risk of Harm to Children.

Research demonstrates that stability and support increase the likelihood of successful reintegration for former offenders, and that public policies that make it more difficult for them to succeed undermine public safety. *See, e.g.*, JOAN PETERSILIA, WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY (2003). With respect to sex offenders in particular, research has shown that isolation, unemployment, depression, and instability – conditions known as dynamic risk factors – correlate with increased recidivism. *See* R. KARL HANSON & ANDREW J.R. HARRIS, DYNAMIC PREDICTORS OF SEXUAL RECIDIVISM (1998); R. KARL HANSON & KELLY MORTON-BOURGON, PREDICTORS OF SEXUAL RECIDIVISM: AN UPDATED META-ANALYSIS (2004); COLO. DEP'T OF PUBLIC SAFETY, REPORT ON SAFETY ISSUES RAISED BY LIVING ARRANGEMENTS FOR AND LOCATION OF SEX OFFENDERS IN THE COMMUNITY (2004); Candace Kruttschnitt, Christopher Uggen & Kelly Shelton, *Predictors of Desistance Among Sex Offenders: The Interaction of Formal and Informal Social Controls*, 17 JUST. Q., 61-88 (2000).

The Iowa statute significantly increases the danger that sex offenders will recidivate by depriving them of housing. The District Court found: "In larger cities such as Des Moines and Iowa City, the maps [detailing the exclusion zones] show that the two thousand foot circles cover virtually the entire city area," and that in "smaller towns that have a school or child care facility, the entire town is often engulfed by an excluded area." *Doe v. Miller*, 298 F.Supp.2d 844, 851 (S.D. Iowa 2004). The Court also found that although "[u]nincorporated areas and towns too small to have a school or child care facility remain available, as

does the country, . . . available housing in these areas is not necessarily available." *Id.*

Additionally, the Iowa statute increases the risk of recidivism by forcing many sex offenders to move from supportive environments that reduce the offenders' re-offense risk. For example, John Doe XVIII sought to live with his adult son upon release from prison but was prohibited from doing so because of the 2000-foot restriction. *Doe v. Miller*, 298 F.Supp.2d 858. Instead, he moved to the countryside, where his access to services and support were limited. *Id. See also* Jill Levenson & Leo Cotter, *The Impact of Sex Offender Residency Restrictions: 1,000 Feet From Danger or One Step From Absurd?*, 49 Int'l J. of Offender Therapy and Comp. Criminology, 168 (2005) (reporting that almost half of the sex offenders surveyed in Florida were prevented from living with supportive family members because of the state's residency restriction).

Uprooting offenders, like John Doe XVIII, from housing, social support and services, and employment opportunities, will only increase, rather than reduce, the risk that they will recidivate and sexually abuse children. This is precisely one of the reasons why the State of Minnesota rejected a proposal to prohibit sex offenders from living within 1500 feet of schools and parks. A study commissioned by the Minnesota Legislature recommended against passing the proposed restrictions in part because they would "pose . . . problems, such as a high concentration of offenders [in rural areas] with no ties to community; isolation; lack of work, education and treatment options; and an increase in the distance traveled by agents who supervise offenders." MINN. DEP'T OF CORRECTIONS, LEVEL THREE SEX OFFENDERS RESIDENTIAL PLACEMENT ISSUES, 2003 REPORT TO THE LEGISLATURE, 9 (2003). The

study also concluded, as will be addressed in more detail below, that the proposed residency restrictions would not reduce sex offender recidivism. *Id.*[3]

B. There Is No Evidence That Sex Offender Residency Restrictions Protect Children from Sexual Abuse.

Proponents of sex offender residency restrictions argue that such measures are necessary to diminish the likelihood that sex offenders will come in contact with children whom they might potentially victimize. However, there is no basis for such claims. To the contrary, states that have examined the question closely have concluded that such restrictions do not protect children.

The Minnesota study discussed above specifically analyzed whether proximity to schools or parks increased the recidivism rates for sexually violent predators ("level three offenders"). The Study reached the following conclusions:

> Based on the examination of level three re-offenders, there were no examples that residential proximity to a park or school was a contributing factor in any of the sexual re-offenses [observed in the study]. ***Enhanced safety due***

[3] Furthermore, sex offender residency statutes create a false sense of security that may leave children more vulnerable to sexual abuse. *See* Robert F. Worth, *Exiling Sex Offenders From Town: Questions About Legality and Effectiveness*, THE NEW YORK TIMES, Oct. 3, 2005 ("The restrictions could create a false sense of security, since many convicted sex offenders did not live or work near their victims") (quoting Ernie Allen, president of the National Center for Missing and Exploited Children).

> ***to proximity restrictions may be a comfort factor for the general public, but it does not have any basis in fact.*** The two level three offenders [in the study] whose re-offenses took place near parks both drove from their residences to park areas that were several miles away. . . . Based on these cases, it appears that a sex offender attracted to such locations for purposes of committing a crime is more likely to travel to another neighborhood in order to act in secret rather than in a neighborhood where his or her picture is well known.

Id. (emphasis added).

In 2004, the Colorado Department of Public Safety conducted a similar study. The Colorado researchers concluded: "Placing restrictions on the location of . . . supervised sex offender residences may not deter the sex offender from re-offending and should not be considered as a method to control sexual offending recidivism" COLO. DEP'T OF PUBLIC SAFETY, *supra* at 5.

The Minnesota and Colorado studies demonstrate that while sex offender residency restrictions might be a "comfort factor" to the public, they do not protect children from sexual abuse.

C. Sex Offender Residency Statutes Are Driven by Fear, Not Facts.

Sex offender residency laws are growing in number across the country. The proliferation of these measures, however, is driven by fear, not facts.

Tragic cases of child abduction and sexually motivated murder receive extraordinary media attention, and the